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IN THE

Supreme Court of the United States

October Term, 1967

No. 494

RALPH CARNES,

Petitioner.

vs.

THE STATE OF GEORGIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA.

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TABLE OF CONTENTS.

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Issues	4
Constitutional Provisions and Statutes Involved	5
Statement	5
Reasons for Granting the Writ	11
Conclusion	12

Appendix:

1. Decision of the Court of Appeals of Georgia 1a

TABLE OF AUTHORITIES.

PAGE

CASES:

Miranda v. Arizona, 384 U. S. 436 16 L Ed. 2d, 694 4

Hamockton v. Alabama, 368 U. S. 52, 7 L. Ed. 114 11

Gideon v. Wainright, 372 U. S. 335 9 L. Ed. 799..... 11

White v. Maryland, 373 U. S. 59 11

Escobedo v. Illinois, 378 U. S. 478, 12 L. 2d 977 11

Massiah v. United States, 377 U. S. 204 11

Lee v. United States, 322 Fed. Reporter 2d, 770, 778..... 11

CONSTITUTION OF THE UNITED STATES:

Amendment XIV § 1 5

STATUTES:

28 U.S.C. § 1257 (3) 3

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of Georgia, entered in the above case on March 14, 1967, and finally affirmed by the Supreme Court of Georgia in which a Petition for Certiorari was requested on May 25th, 1967.

OPINIONS BELOW.

The opinion of the Court of Appeals of the

State of Georgia is reported in 115 Ga. App. 387. A copy of that opinion is attached hereto in Appendix I.

No opinion was written by the Court of Appeals of Georgia denying the Motion for Reconsideration and no opinion was written by the Supreme Court of Georgia denying Petitioner's Motion for Writ of Certiorari, or his Motion for Reconsideration of the Supreme Court's ruling denying the Petition for Writ of Certiorari.

JURISDICTION.

Petitioner was tried and convicted on March 15th, 1966. A Motion for New Trial was filed on that date and amended on July 28th, 1966. The trial judge over-ruled the Motion for a new trial on October 5th, 1966, and an appeal was taken on October 31st to the Court of Appeals of the State of Georgia. The Court of Appeals announced its decision on February 24th, 1967. A Motion for Reconsideration was filed on March 14th, 1967, which Motion for Reconsideration was denied.

A Petition for Certiorari was then filed in the Supreme Court of Georgia on April 13th, 1967. The Petition for Certiorari was denied and a Motion for Reconsideration of the denial of the Petition for Certiorari was filed on May 14th, 1967. A Motion for Reconsideration was denied on May 18th, 1967, and a Remittiture transmitted to and received by the Court of Appeals of the State of

Georgia, finally adjudicating the case on May 25th, 1967.

A copy of the opinion of the Court of Appeals, which was the only written opinion, is attached to the Petition in the Appendix hereto. The jurisdiction of this court is invoked under *28 U.S.C. § 1527 (3)*.

QUESTIONS PRESENTED.

Ralph Carnes, the Petitioner, was indicted for the offense of receiving stolen property on March 8th, 1966. He was unable to obtain counsel until noon on March 12th, 1966. Despite protest by his counsel that there had been inadequate time to prepare a defense and protest that a trial would deny Carnes his constitutional rights to assistance of counsel, he was placed on trial and convicted on March 15th, 1966.

During the trial the court allowed into evidence admissions and confessions signed by the Defendant, after interrogation by the chief prosecuting witness, conducted in the presence of the Sheriff of Coweta County, Georgia. The confessions were made in the presence of the Sheriff aforesaid, after he had accused the defendant of being involved in property that had been stolen. The confessions were made in the presence of the Sheriff of Coweta County, after he had called the chief prosecuting witness and local officers to Mr. Carnes' store and then informed the defendant Carnes that

he was out of his jurisdiction, but that it would be better if he would tell the truth. None of the facts about the admissions and confessions made by the defendant to the chief prosecuting witness, in the presence of the Sheriff of Coweta County, Georgia, were known to the defense counsel before trial because there had been inadequate time to interview the State's witnesses. The confessions were taken in the presence of the Sheriff of Coweta County at a time when Defendant had not been informed of his right to counsel or his constitutional rights under the Fourteenth Amendment as construed by this court.

ISSUES.

1) Whether admissions and confessions made by a defendant during questioning by the chief prosecuting witness at the instance, request and in the presence of the arresting Sheriff, who had already accused the defendant of being involved in a crime, are admissible when the Sheriff who is present and aware of the interrogation, does not inform the defendant of his constitutional rights to counsel, to remain silent and that his statements may be used against him.

2) Whether the rule announced by this court in *Miranda v. Arizona* may be circumvented by allowing precustodial interrogation to be conducted by a chief prosecuting witness in the presence and under the direction of a State officer.

3) Whether the Defendant, Ralph Carnes, was denied due process of law and effective assistance of counsel when he was placed on trial on a Tuesday morning following his representation on the preceding Saturday morning considering the nature and facts of his defense.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Amendment XIV § 1, United States Constitution:

> "All persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deprive any person within its jurisdiction of the equal protection of the laws."

STATEMENT.

Ralph Carnes was indicted on March 8th, 1966, by the Grand Jury of Coweta County for the offense of receiving stolen goods. He was unable to obtain counsel until the following Saturday, March 12th, 1966, at 12:00 o'clock P.M. He was subsequently

placed on trial on Tuesday morning, March 15th, 1966. Upon the call of the case, the Defense Counsel, protested there had been insufficient time to prepare the case for trial and moved the court to continue the case on the grounds that to place the Defendant on trial, when the defense counsel was totally unprepared, would effectively deny the Defendant benefit of counsel during the trial. The motion for a continuance was made prior to entering a plea or appearing in the case in any manner as shown in the record. (R-43)

The defense counsel stated, in summary, that the results of the investigation that he made and the work that he had completed with reference to defending Mr. Carnes indicated that the defense which defendant could put forth was that he was not guilty of the crime of receiving stolen goods because he had no reason to believe at the time the goods were received that they had been stolen. (R-43)

Defense counsel stated that he intended to prove that the price paid for the goods was not incommensurate with prices normally paid for salvage merchandise.[1] He further stated that he was unfamiliar with the salvage business and that he had spent his time preparing on the legal points of the case, but that if he were granted additional

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1. Salvage merchandise describes merchandise of the type purchased by defendant, i.e. groceries that have been damaged or packages that have been damaged.

time, he was assured by the defendant, that he could bring witnesses before the court who could testify to the fact that the prices paid by the defendant were not such prices that would make the transaction an unusual one in the salvage field. (R-44)

Defense counsel further urged his motion for continuance because he had used all the time, since employment, in researching the law of the case and discussing the matter with his client and because of his work in this direction and the intervening weekend when the public offices containing the indictment were closed, he had had no time to ascertain the identity or interview the State's witnesses in order that he could know what evidence would be presented against his client.

Defense counsel further accounted to the trial court for all his time from the time of employment until the time of the trial and these facts are shown in the record (R-45-47) In essence, the account showed that all the useable time between the time of employment on Saturday and the time of trial on Tuesday morning was used in preparing the case, but despite these efforts the defense counsel enumerated several items that remained to be completed and stated that without these matters being completed, his defense of Ralph Carnes would be an uneducated and unprepared one and would effectively deny defendant Carnes the right of counsel. (R-44)

Those items enumerated by defense counsel as having been uncompleted because of lack of time

between the time of his employment and the time of trial were as follows: (R-44)

1) The State's witnesses were not examined by defendant's counsel before trial, for lack of sufficient time to accomplish the same.

2) All the State's witnesses were not known or identified by defendant's counsel and were not interviewed.

3) Defendant was not allowed sufficient time to produce witnesses known to the Defendant, Ralph Carnes, who had had similar legal transactions in the salvage business and who could have shown that there was no guilty knowledge on the part of Ralph Carnes because of the disparity in the price paid by Ralph Carnes for the goods and a normal market price. Witnesses who could have testified to this effect were available, but because of lack of time, the defense counsel was unable to locate them and produce them at the time of the trial.

Defense counsel's motion for a continuance on all the grounds set forth in the record were overruled and the defendant was required to plead and go to trial despite his protest. (R-48) Upon the trial of the case, the testimony showed that Ralph Carnes, on February 7th, 1966, purchased from persons unknown, certain goods, which were alleged to have been stolen from Alterman Foods Incorporated. The uncontradicted evidence showed that two individuals came to the place of business of Ralph Carnes on February 7th, 1966, and offered to sell him "salvage" merchandise. (R-53) Mr.

Carnes admitted buying the goods, but claimed that he had no knowledge that the goods were stolen and that the transaction was not unlike other transactions that he had in buying salvaged or damaged merchandise. i. e. He did not knowingly buy stolen goods.

The case presented by the State against Ralph Carnes consisted in the main of testimony by the Sheriff of Coweta County, Lamar Potts, stating that he went to Mr. Carnes' store on February 10th and said to Mr. Carnes that he was on the wrong side of the river and that he would wait there for the Carroll County Sheriff's office or some of them to come over. (R-87) He told Mr. Carnes that he was waiting there because a truck was stolen in Atlanta on Monday and that the truck was unloaded at Buck Dyers' place over there at Tony Vaughn's and that Mr. Carnes had brought the stuff on over here. (R-88) Mr. Potts stated that he called Mr. Hunt, the chief prosecuting witness, and an employee of Alterman Foods to Mr. Carnes' store on that date, (R-88), and Mr. Hunt testified that he discussed the matter with Mr. Carnes at that time, but "didn't say anything to him for some little bit after they (apparently referring to the officers) got a search warrant from Carrollton". (R-76) Mr. Hunt then conducted an interrogation of Mr. Carnes and had Mr. Carnes sign an inventory of the material he had received to the following effect:

> "This is to certify that all the merchandise on the invoice was stolen from Alterman Foods and purchased by me." (R-53)

At no time was there any evidence introduced showing that Mr. Carnes was advised of any of his procedural rights or that the evidence was introduced voluntarily or without being induced by the slightest hope of benefit or remotest fear of injury.

Counsel for the defendant urged, upon the trial court, that a Motion for Continuance should be granted in order that defendant would not be denied effective assistance of counsel during the trial. This Motion for a Continuance was over-ruled and the same objection was made again to the trial court in its amended motion for new trial. (R-23). The objection was further urged on the Court of Appeals of Georgia (R-121) (R-153) and in defendant's Petition for Certiorari to The Supreme Court of Georgia.

The objection was made by defense counsel that the signed confessions should not be allowed into evidence because they were made at the time Mr. Carnes did not have counsel and at a time when the proceedings against Mr. Carnes had become accusatory. (R-96) The objection was further made that the confessions should not be allowed into evidence because they were signed by Mr. Carnes while he was under the impression that if he assisted that he would not be prosecuted. All of these facts, of course, would not have taken place had Mr. Carnes been offered the assistance of counsel, or informed of his procedural rights.

REASONS FOR GRANTING THE WRIT.

At this stage in history, there is no question that every person accused with a crime is entitled to a counsel at all critical stages of the proceedings which are designed to bring him to trial. See *Hamockton v. Alabama* 368 *U. S.* 52, 7 *L.Ed.* 114; *Gideon v. Wainwright*, 372 *U.S.* 335, 9 *L. Ed.* 799; *White v. Maryland*, 373 *U.S.* 59. In the recent case of *Escabedo v. Illinois*, it was held that any stage of the proceeding is critical if the denial of counsel at that particular time caused the defendant to prejudice himself by not having had an attorney and thus deprive him of due process of law. The case at bar falls well within the admonition of the above entitled cases, and such cases as *Massiah v. United States*, 377 *U.S.* 204, and the admonition contained within *Lee v. United States*, 322 *Fed. Reporter 2d*, 770, 778. In the case at bar, it is obvious that the Defendant should have been apprised of his right to counsel before he was questioned and asked to sign statements that were later allowed into evidence against him. The statements admitted into evidence amounted to confessions of guilty knowledge on his part, that he knew the goods received by him were stolen.

If the decision of the Court of Appeals of the State of Georgia is allowed to stand, it will amount to the granting of license to police officers to have prosecuting witnesses conduct interrogations of accused individuals and thereby effectively circumvent the guidelines laid down so carefully by this Court in the *Miranda* decision.

CONCLUSION.

Counsel for the Petitioner respectfully submits that the Petition for the Writ of Certiorari should be given favorable consideration by the Court. Counsel has lived with this case, has been more active in it, and participated in it more than any other individual involved, and has a greater insight as to all of the events which have transpired than any other individual, simply by the nature that he has been more involved and longer involved than anyone else. While recognizing those who violate the law, or apparently do so, must be punished, it is respectfully submitted that the trial of this case in the hasty manner that it was done did not allow this man a fair trial, because of the short time given him and his counsel to prepare. While the record may not be as complete as it should, and while there may be other technicalities as to the way objections were made or the record presented on appeal, it is respectfully submitted that these deficiencies are mute testimony of the fact that counsel was not adequately prepared, did not have time to ascertain what testimony would be presented against his client, and did not have time to bring in the witnesses that the Defendant wished brought before the court. Reversal of this case at this stage will illustrate to defendants that they have a right to a speedy trial, if they so elect, but if they wish they may have such time to prepare as is necessary and reasonable. Further, the decision will illustrate that trial judges must exercise the discretion vested in them with wisdom and consideration for the case in point, and with respect to the particular facets and aspects of

the case that is presented before them at the time of the motion for continuance. To allow this decision to stand gives trial judges cart-blank authority to deny well founded motions, based on sound reason and logic, and necessary for the proper preparation of *all* issues, both factual and legal, that are necessary to present the defendant's side of the case. It has long been appalling to me that a civil case involving $30.00 is more respected as to the amount of time that a defendant is given to answer than a criminal case involving a man's freedom, when it is an absolute necessity that he be given time to prepare.

If the decision of the Georgia Court of Appeals stands, it will also allow peace officers to circumvent procedural safeguards that have arisen by virtue of the Constitution of the United States and the subsequent interpretative decisions thereof. In essence, Ralph Carnes was accused, by Sheriff Potts of Coweta County, of receiving stolen property, was told that it would be good to cooperate, although the sheriff himself had no authority, and then subjected Carnes to extensive questioning which resulted in incriminating statements and confessions. If this type of procedure is allowed, after one has been accused of a crime, without the defendant being informed of his right to counsel and informed of his other rights, the meaning of the cases cited, and the procedural safeguards set up by the Constitution are a sham and completely meaningless.

It is respectfully submitted that the rulings of the Georgia Court of Appeals shall be reversed. If the

conviction is reversed, this individual still stands subject to trial in the Coweta Superior Court, and could receive more severe punishment on a second trial; however, we implore this Court to give serious consideration to the points which have been made to the end that irrespective of the further outcome, Ralph Carnes be given a chance to have effective assistance of counsel. Effective assistance, in the mind of the scrivener of this instrument, means at least a counsel who has had time to find out the factual evidence which will be presented against the dedendant in the criminal case, as civil defendants have an opportunity to do under the laws of Georgia. It further means the opportunity to have a counsel who has had sufficient time to investigate and research the law involved and to have available witnesses who can substantiate the defendant's position. This time will vary, as does the number of criminal cases tried in the courts of Georgia. Each case must truly be decided on its own facts. In this case, to allow this decision to stand under the facts and circumstances enunciated by counsel at the time of the motion for new trial show that this case is one in which additional time should have been given. Reasons such as "If a continuance were granted in this case, indictments would have to be presented on one week and then there would have to be a week's delay in trials during another week" are invalid reasons for not granting a continuance in this case or any other case. They are reasons for changing the procedure, and not reasons for not allowing continuances when they are justified. If counsel's opinion, when stated in detail that additional time should be granted, is a conclusion, it would appear

that it is a conclusion in a field in which he is somewhat expert, and one in which he is probably the only one that really knows in its fullest context.

It is respectfully submitted that for all of the reasons aforesaid that serious consideration should be given by this Court to the granting of a Writ of Certiorari to the Court of Appeals of Georgia.

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